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ASSISTANT ATTORNEY GENERAL FOR ANTITRUST, THOMAS O. BARNETT, **ISSUES STATEMENT ON EUROPEAN MICROSOFT DECISION**

WASHINGTON — Thomas O. Barnett, Assistant Attorney General for the Department's Antitrust Division, issued the following statement today after the Court of First Instance of the European Communities (CFI) issued its decision today affirming the substance of the European Commission's (EC) March 2004 decision against Microsoft:

"In light of the United States' own antitrust case and judgment against Microsoft, and the importance of the computer industry to consumers and to the global economy, the United States has a particular interest in today's CFI decision. The decision is both lengthy and complex, as befits the importance and difficulty of the issues raised by the EC's case against Microsoft. It will therefore be some time before the full impact of today's decision on antitrust policy in Europe will be apparent. We are, however, concerned that the standard applied to unilateral conduct by the CFI, rather than helping consumers, may have the unfortunate consequence of harming consumers by chilling innovation and discouraging competition.

"In the United States, the antitrust laws are enforced to protect consumers by protecting competition, not competitors. In the absence of demonstrable consumer harm, all companies, including dominant firms, are encouraged to compete vigorously. U.S. courts recognize the potential benefits to consumers when a company, including a dominant company, makes unilateral business decisions, for example to add features to its popular products or license its intellectual property to rivals, or to refuse to do so.

"The Justice Department looks forward to continuing its wide-ranging and positive relationship with the EC on antitrust matters, including matters affected by today's decision. This cooperation is particularly important given the global nature of many markets, including in the high technology sector. The Justice Department will work with the EC to develop sound antitrust enforcement policies that benefit consumers on both sides of the Atlantic."

Background

The United States filed a complaint against Microsoft in 1998, alleging that Microsoft had restrained competition in violation of U.S. antitrust laws through exclusionary conduct that, among other acts, was meant to contain the competitive threat posed by the Netscape Navigator Internet browser, Sun Microsystems' Java platform, and similar software "middleware." After the United States prevailed at trial, the Court of Appeals for the District of Columbia confirmed that Microsoft had violated the Sherman Act but remanded the case after rejecting portions of the

trial court's liability findings and the trial court's remedy. Following remand, the United States reached a settlement, embodied in a Final Judgment, that was reviewed and approved by the district court. A related Court of Appeals decision in 2004 confirmed the relief. The Final Judgment protects consumers by protecting competition in middleware; for example, it prohibits Microsoft from using exclusive contracts that inhibit competition, and it requires Microsoft to provide information to allow interoperability of competitors' software. The United States continues to enforce the Final Judgment, which has resulted in substantial changes to Microsoft's business practices, benefitting United States consumers. The Final Judgment has been successful in protecting middleware competition and therefore potentially reducing barriers to entry into the operating system market. Because of the Department's enforcement efforts, consumers have benefitted from increased competition in middleware products, including web browsers, media players, and instant messaging.

The EC found in 2004, in an administrative proceeding, that Microsoft had committed an "abuse of dominant position" under European Union law by incorporating its Windows Media Player software into its operating system and by failing to provide certain server interoperability information to competitors, among other acts. The EC fined Microsoft approximately \$613 million and ordered it, among other relief, to offer a version of its operating system without Windows Media Player, and to make certain server protocols available to competitors. Microsoft filed a petition asking the CFI to annul the EC's findings, order, and fine, leading ultimately to today's decision by that court.

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